TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

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OPINION	:	No. CV 78-98
of	:	January 5, 1979
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SUBJECT: AUTHORITY OF BOARD OF VOCATIONAL NURSE AND PSYCHIATRIC TECHNICIAN EXAMINERS TO REQUIRE LICENSING—The Board of Vocational Nurse and Psychiatric Technician Examiners does not have the authority to require alcoholism program counselors to be licensed as psychiatric technicians.

The Honorable Rita Saenz, Director, Department of Alcohol and Drug Abuse, has requested an opinion on the following question:

Does the Board of Vocational Nurse and Psychiatric Technician Examiners (BVNPTE) have the authority to require alcoholism program counselors to be licensed as psychiatric technicians?

The conclusion is:

The Board of Vocational Nurse and Psychiatric Technician Examiners (BVNPTE) does not have the authority to require alcoholism program counselors to be licensed as psychiatric technicians.

ANALYSIS

Psychiatric technicians are licensed under the "Psychiatric Technicians Law," section 4500 *et seq*. of the Business and Professions Code. That law provides for licensing as a psychiatric technician after an applicant has completed a prescribed course of study in a state accredited school, and has successfully passed a qualifying examination. (Bus. & Prof. Code, §§ 4510–4516.) The Psychiatric Technicians Law is "administer[ed] and enforce[ed]" by the Board of Vocational Nurse and Psychiatric Technician Examiners (hereinafter "BVNPTE"). (Bus. & Prof. Code, §§ 4501, 4503.) With certain exemptions not relevant herein (see Bus. & Prof. Code, §§ 4507, 4508), the law requires that "[a]fter January 1, 1970, no person shall perform services described in Section 4502 without a license issued under" the Psychiatric Technicians Law. (Bus. & Prof. Code, § 4540.)

Section 4502 of the Business and Professions Code thus defines who are psychiatric technicians and what acts constitute the practice of such profession. That section provides:

> "As used in this chapter, 'psychiatric technician' means any person who, for compensation or personal profit, implements procedures and techniques *which involve understanding of cause and effect* and which are used in the care, treatment, and rehabilitation of *mentally ill, emotionally disturbed or mentally retarded persons* and who has one or more of the following:
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> "(a) Direct responsibility for administering or implementing specific therapeutic procedures, techniques, treatments, or medications with the aim of enabling recipients or patients to make optimal use of their therapeutic regime, their social and personal resources, and their residential care.
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> "(b) Direct responsibility for the application of interpersonal and technical skills in the observation and recognition of symptoms and reactions of recipients or patients, for the accurate recording of such symptoms and reactions, and for the carrying out of treatments and medications as prescribed by a licensed physician and surgeon or a psychiatrist.
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> "The psychiatric technician in the performance of such procedures and techniques is responsible to the director of the service in which his duties are performed. The director may be a licensed physician and surgeon, psychiatrist, psychologist, rehabilitation therapeutist, social worker, registered nurse, or other professional personnel.

> "Nothing herein shall authorize a licensed psychiatric technician to practice medicine or surgery or to undertake the prevention, treatment or cure of disease, pain, injury, deformity, or mental or physical condition in violation of the law." (Emphasis added.)

The BVNPTE has taken the position that it may, *within the scope of the specific sanctions described in section 4502,* require that anyone (nor otherwise exempt) who "implements [such] procedures and techniques which involve understanding of cause and effect" with respect to alcoholics be licensed as a psychiatric technician. It predicates this position on the belief that it may consider alcoholics as "mentally ill" or "emotionally disturbed" persons within the meaning of its licensing requirements.

The BVNPTE would acknowledge the ability of certain "lay counselors" to deal with alcoholics in a "non-medical" setting. The board would define medical to include the activities of the practitioners of the various healing arts, such as psychology.[1]

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[1] The BVNPTE explains its position with respect to a "medical" or "non-medical" mode of treatment as follows:

> "It is the Board's opinion that whether any given function may be performed by an unlicensed person is largely determined by two factors: (1) the extent to which the function is medical in nature and (2) the extent to which the function is represented to be a medical or quasi-medical function. Whether a procedure or function is medical in nature would seem to depend upon its relation to the body of formal medical knowledge ('understanding of cause and effect' in the language of Section 4502) as well as whether the procedure or activity is customarily deemed by the medical profession, or otherwise, to be medical. Compare 50 Ops. Cal. Atty. Gen. 125 (1967) stressing the importance of vocational nursing education and analyzing functions in terms of 'routine functions of nursing', in concluding [sic] that blood withdrawal is not within the scope of practice of a licensed vocational nurse. With respect to representations of functions as medical or nonmedical, it is certainly relevant whether a function is performed under a comprehensive program which is either itself ostensibly a medical treatment program or as a part of an ostensibly medical component of a general alcoholism treatment program. The Board is simply not concerned with whatever counseling or like care and treatment is performed by lay persons in the course of non-medical programs or components.
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> "With the above limits of the Board's jurisdiction kept in mind, there should be little doubt that the Board may properly include alcoholism as a mental illness or emotional disturbance. To reiterate, the Board's lawful area of concern is simply with those alcoholism treatment programs which one way or another purport to provide medical treatment of alcoholism or which employ procedures and techniques which are by nature medical."

The BVNPTE relies heavily upon the Diagnostic and Statistical Manual of Mental Disorders (2d Ed. 1968) of the American Psychiatric Association, more commonly known as "DSM-II" for its position that "alcoholics" are properly included within the terms "mentally ill" or "emotionally disturbed" as used in section 4502 of the Business & Professions Code. That manual basically presents a uniform nomenclature and definition of terms for use by psychiatrists, and others. (See p. viii of the Forward thereto.) It categorizes alcoholism as a mental disorder within a sub-class V, "Personality Disorders And Certain Other Non-Psychiatric Mental Disorders" (301–304) (DSM-II, at p. 9). A further breakdown of this so called "mental disorder" is made whereby alcoholism (303) is subdivided into "O. Episodic excessive drinking"; ".1 Habitual excessive drinking"; ".2 Alcoholic addiction"; and ".9 Other [and unspecified] alcoholism." These terms are later defined in the manual (DSM-II, at p. 45.)[2]

The Department of Alcohol and Drug Abuse (ADA) takes the position, however, that the law which establishes that department negates in section 11779 of the Health and Safety Code any argument that the BVNPTE is empowered to require alcoholism treatment counselors to be licensed as psychiatric technicians. That section provides that the ADA "shall have the power . . . [t]o adopt rules and regulations in accordance with the provisions of the Administrative Procedure Act necessary for proper execution of the powers and duties granted to and imposed upon . . . [it] including, . . . rules and regulations to establish standards for alcoholism prevention, treatment and rehabilitation services, the public and private facilities which provide such services, *and the qualifications of the personnel of such facilities.*" (Emphasis added.) ADA additionally believes that it is extremely doubtful that the Legislature intended BVNPTE to have the power to define alcoholism as a mental illness or emotional disturbance within its licensing provisions. According to ADA, there are approximately 225 alcoholism programs under its jurisdiction with over 1500 counselors of which virtually none are licensed as psychiatric technicians. ADA points out

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[2] The manual states, inter alia:

"303 Alcoholism

"This category is for patients whose annual intake is great enough to damage their physical health, or their personal or social functioning, or when it has become a prerequisite to normal functioning. If the alcoholism is due to another mental disorder, both diagnosis should be made. The following types of alcoholism are recognized; . . . ."

"Episodic excessive drinking" is defined as becoming intoxicated 4 times a year; "habitual excessive drinking" as becoming intoxicated more than 12 times a year, or recognized under the influence of alcohol more than once a week. "Alcohol addiction" is dependence upon alcohol, and is presumed after 3 months of heavy drinking."

For a discussion of the use of the term "mental disorder" in lieu of "mental illness" in California law, see discussion *infra*.

the catastrophic effects to its program which a sweeping decision that alcoholic program counselors must he licensed as psychiatrists could have, and urges that the Legislature could not have intended such a catastrophe.

It is the conclusion of this office that the provisions of section 11779 of the Health and Safety Code may not be relied upon to demonstrate conclusively that BVNPTE has no possible jurisdiction over alcoholism program counselors. However, the legislative history of the statutes relating to both mental illness and alcoholism demonstrate that the Legislature never intended that the treatment of alcoholics should fall within the purview of section 4502 of the Business and Professions Code as the treatment of persons who are "mentally ill, emotionally disturbed or mentally retarded." Accordingly, we conclude that BVNPTE does not have the authority to require alcoholism program counselors to be licensed as psychiatric technicians.

1. The Effect of Health & Safety Code, Section 11779

The Department of Alcohol and Drug Abuse (ADA) was established by Statutes of 1977, chapter 1252 to be operative on July 1, 1978. It succeeds to the powers and duties of the Office of Alcoholism previously established in the Department of Health, and also succeeds to the powers and duties of the prior Department of Health relating to its "substance abuse function." ADA has two divisions, the Division of Alcohol Abuse and Alcoholism and the Division of Drug Abuse. (Health & Saf. Code, § 11753, as amended, Stats. 1978, Ch. 429, § 137.6.)

With respect to alcoholism, the Division of Alcohol Abuse and Alcoholism basically oversees all state alcoholism programs, acts as the "single state agency relating to federal funding for alcoholism programs as required, reviews and approves all county alcoholism program budgets, and encourages, cooperates with and coordinates public and private agencies and health facilities with respect to prevention, treatment and rehabilitation of alcoholics. (Health & Saf. Code, § 11778.) Section 11779 of the Health & Safety Code, as already noted, gives the ADA the power to adopt administrative regulations relating to the qualifications of personnel at public and private alcoholism treatment facilities.

We note initially that neither ADA nor its predecessor Office of Alcoholism has adopted any such regulations. The argument that section 11779 negates any power of the BVNPTE to require personnel at alcoholism treatment or rehabilitation facilities to be licensed as psychiatric technicians is appealing because of its simplicity. The argument states that the law provides that ADA has exclusive jurisdiction to determine the qualifications of personnel at such facilities; therefore, it necessarily follows that BVNPTE is not empowered to require personnel therein to be licensed as psychiatric technicians.

Unfortunately, however, we do not believe this argument will withstand closer analysis.

We are here concerned with the "qualifications" of alcoholism treatment counselors. However, section 11779 of the Health and Safety Code does not restrict the power of ADA to prescribe the qualifications of these counselors. Its language applies apparently to all personnel at "public and private facilities which provide . . . [the] services" of "alcoholism prevention, treatment and rehabilitation." Thus, if one were to take the above discussed argument to its logical conclusion, ADA would have the power to permit unlicensed persons to even practice medicine. Even the uninitiated layman is aware of the fact that some "medical" treatment may be necessary to treat or help rehabilitate an alcoholic, if it is nothing more than prescribing drugs to lessen withdrawal problems. However, we doubt that section 11779 was intended to empower ADA to permit unlicensed persons to practice medicine.

It is therefore evident that the intent of the Legislature in enacting the pertinent portion of section 11779 of the Health and Safety Code is not entirely clear. It might be that the Legislature intended that ADA be empowered to prescribe the number and type of personnel at particular treatment facilities, such as medical doctors, psychologists, clinical social workers, etc. It may also be that the Legislature intended that ADA should be, as urged herein by ADA, empowered to prescribe qualifications for "lay counselors" on the assumption that where the need existed for a medical doctor or a psychiatrist or a psychologist (that is, one who *obviously* must be licensed), the treatment facility would fill that need as a matter of course without the need for ADA to specify the "qualifications" of such personnel. This latter approach would be more consonant with the position of ADA herein. However, this approach still presents the problem of overlap with other licensing laws such as those relating to psychologists (Bus. & Prof. Code, § 2900 *et seq*.), clinical social workers (Bus. & Prof. Code, § 9040 *et seq*.), and marriage, family and child counselors (§ 17800 *et seq*.). In short, did the Legislature intend that ADA have the power to exempt alcoholic treatment counselors from those licensing laws where counseling is a major part of the practice of such profession?

Because of the uncertainty of the legislative intent with respect to Health and Safety Code, section 11779, we decline to predicate our holding herein that BVNPTE may not require alcoholism treatment counselors to be psychiatric technicians upon that section. We believe there are much stronger grounds to do so, that is, the history of the Psychiatric Technicians Law in relation to other laws dealing with alcoholism.

2. The Psychiatric Technicians Law and State Laws Specifically Relating To Alcoholism

The Psychiatric Technicians Law (Bus. & Prof. Code, § 4500 *et seq*.) was added to the California law in 1959. (Stats. 1959, Ch. 1851, p. 4402 *et seq*.) It was added after extensive legislative hearings with the purpose of giving professional status to the large number of individuals working in that civil service classification in hospitals under the jurisdiction of the then Department of Mental Hygiene, and a relatively smaller number of individuals who were performing similar duties in private institutions. (See Subcommittee Report on Psychiatric Technicians (1959) Appendix to Sen. J. (1959 Reg. Sess.).) The law was initially a "certification law" (see prior Bus. & Prof. Code, § 4500 *et seq.),* but in 1968 was amended to provide for licensing of psychiatric technicians. (See Stats. 1968, Ch. 1323, p. 2503 *et seq.)* As initially enacted, section 4502 defined a psychiatric technician as one who "under the direction of a licensed physician or psychiatrist or a registered professional nurse, performs services in caring for and treatment of the *mentally ill or mentally retarded* for compensation or personal profit," which services were similar to those presently described in the same numbered section. (Emphasis added.)

Thus, in 1959, the certification requirement relating to psychiatric technicians was limited to two groups of patients, those who were "mentally ill" and those who were "mentally retarded."

Significant, however, to our inquiry is the fact that *at that time* the Welfare and Institutions Code provided for the voluntary or involuntary commitment of persons to hospitals under the jurisdiction of the Department of Mental Hygiene falling within a number of additional classifications other than those who were "mentally ill" or "mentally retarded". These included alcoholics, or "inebriates" and "dipsomaniacs" as they were then called. Thus the Welfare and Institutions Code provided in 1959, when the Psychiatric Technicians Law was passed, for the care by the Department of Mental Hygiene in state hospitals of 1) "mentally ill persons" (see prior Welf. & Inst. Code, § 5100 *et seq*.); 2) "mentally deficient persons," who were defined as "mentally retarded" persons, (see prior Welf. & Inst. Code, § 5250 *et seq*.); 3) "epileptic persons" (see prior Welf. & Inst. Code, § 5300 *et seq*.); 4) "narcotic drug addicts" (see prior Welf. & Inst. Code, § 5350 *et seq*.); 5) "dipsomaniacs, inebriates and habit forming drug addicts" (see prior Welf. & Inst. Code, § 5400 *et seq*.); 6) "sexual psychopaths (see prior Welf. & Inst. Code, § 5500 *et seq.*)*;* and 7) "mentally abnormal sex offenders" (see prior Welf. & Inst. Code, § 5600 *et seq*.).

Thus when the provisions of the Psychiatric Technicians Law as enacted in 1959 are read together with the Welfare and Institutions Code as it read at that time, the law clearly did not equate or include alcoholics (dipsomaniacs and inebriates) with "mentally ill persons." In fact, the law significantly (and many would believe with a great deal of

insight) categorized alcoholics generally with drug addicts, not with "mentally ill" persons.[3] In construing the present intent of section 4502 of the Business and Professions Code "it is proper to consider the history and purpose of the enactment [], . . . [and] other statutes in *pari materia*." (*Stafford v. Realty Bond Service Corp*. (1952) 39 Cal. 797, 805.) Or as stated in *People v. Ventura Refining Co*. (1928) 204 Cal. 286, 291: "' . . . the intent of the lawmakers is to be ascertained by taking into account several considerations as: the history of the legislation upon the subject treated of, and *concurrent legislation affecting the same or closely kindered subjects*. . . .'" (Emphasis added.) (See also, e.g., *Meyer v. Board of Trustees* (1961) 195 Cal. App. 2d 420, 424–425.) Accordingly, it would appear, and we so conclude, that in 1959 when the Psychiatric Technicians Law was enacted, the Legislature did not intend to include alcoholics within the term "mentally ill or mentally retarded persons" as used in section 4502 of the Business & Professions Code with respect to persons cared for by certified psychiatric technicians. "[T]he use of specific words and phrases connotes an intent to exclude that which is not specifically stated." (*In re Hubbard* (1964) 62 Cal. 2d 119, 126–127. See also, e.g., *City of Coronado v. California Coastal Zone Conservation Com*. (1977) 69 Cal. App. 3d 570, 580.)

Subsequent to 1959 there is additional compelling evidence that the Legislature did not and does not intend that alcoholics be included within the scope of "mentally ill" persons as used in the Psychiatric Technicians Law. Initially, we note that except for perhaps the Psychiatric Technicians Law, the term "mental illness" and its variants fell into disuse in California law. This appears to have occurred with the repeal of much of the existing Welfare and Institutions Code in 1967, and the enactment of the Lanterman-Perris-Short Act, Welfare and Institutions Code, section 5000 *et seq*. (LPS), which became fully operative July 1, 1969. That law had as its general purpose the termination of most involuntary commitments to mental hospitals in the state, with the cases thereafter being handled locally through community mental health programs and facilities established pursuant to the Short-Doyle Act, Welfare and Institutions Code, section 5600 *et seq*. (See Stats. 1967, Ch. 1667, p. 4054 *et seq*.; Stats. 1968, Ch. 989, p. 1912 *et seq*.)

Thus, both (1) the change in terminology from "mental illness" to "mental disorder" and (2) the legislative distinction between persons suffering from a "mental illness" or "mental disorder" and from "alcoholism" is found in the statement of purpose of section 5001 of LPS. As originally enacted in 1967 that section stated:

> "The provisions of this part shall be construed to promote the legislative intent as follows:

[3] We, of course, are not concerned with the category of "mentally retarded" persons, as used either in Section 4502 of the Business & Professions Code or the Welfare and Institutions Code insofar as the jurisdiction of BVNPTE herein is concerned.

> "(a) To end the inappropriate, indefinite, and involuntary commitment of *mentally disordered persons and persons impaired by chronic alcoholism*, and to eliminate legal disabilities;
>
> "(b) To provide prompt evaluation and treatment of persons with *serious mental disorders or impaired by chronic alcoholism; . . .*" (Emphasis added.)

Likewise, LPS in its provisions regarding detention of individuals for 72 hours observation, 14 day treatment or 90 day treatment clearly distinguished in 1967, and still clearly distinguishes between "mentally disordered persons" and "alcoholics" or "inebriates." (See Welf. & Inst. Code, §§ 5008, subdiv. (h), 5150, 5250 and 5300.) The same distinction is made with respect to the appointment of a conservator, treating "mentally disordered persons" and "alcoholics" in the disjunctive. (See Welf. and Inst. Code, § 5350.)[4]

The clear legislative distinction between "mentally disordered persons" and "alcoholics" can further be seen in the evolution of the Short-Doyle Act. As revised in 1967 in conjunction with the enactment of IPS (Stats. 1967, Ch. 1667, § 36, pp. 4074 *et seq*.) as the "California Mental Health Act of 1967," the Short-Doyle Act merely provided in section 5600 that it was "designed to encourage and to assist local governments in the

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[4] See also, e.g., section 5002 of the Welfare and Institutions Code, which provided as originally enacted in 1967 as follows with respect to the State's change in policy with respect to its mental hospitals, (and which still substantially so provides):

> "Mentally disordered persons and persons impaired by chronic alcoholism may no longer be judicially committed.
>
> "Mentally disordered persons shall receive services pursuant to this part. Persons impaired by chronic alcoholism may receive services pursuant to this part if they elect to do so pursuant to Article 3 (commencing with Section 5225) of Chapter 3 of this part.
>
> "Epileptics may no longer be judicially committed.
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> "This part shall not be construed to repeal or modify laws relating to the commitment of mentally disordered sex offenders, narcotic drug addicts, habit forming drug addicts, mentally abnormal sex offenders, mentally retarded persons, juvenile court wards, and mentally disordered criminal offenders."

Thus, whereas section 5550 *et seq*. of the Welfare and Institutions Code had previously provided for the involuntary commitment of "*mentally ill persons*" to state mental hospitals, after 1969 sections 6000 *et seq*. provided for *voluntary* commitment of "*mentally disordered*" persons. In short, the term "mental disorder" replaced the term "mental illness" in the Welfare and Institutions Code. The latter term, in effect, became obsolete.

establishment and development of mental health services, including services to the mentally retarded, through locally administered and locally controlled mental health programs." However, in section 5651.2, with respect to reimbursements, it distinguished between "mentally disordered people and chronic alcoholics" with respect to county expenditures made with reference to LPS detentions and evaluations.

Thereafter, the 1968 version of the Short-Doyle Act, operative July 1, 1969 (Stats. 1968, Ch. 989, § 2, p. 1912 *et seq*.) amended section 5600, *supra*, to provide not only for services for the "mentally disordered," but "to provide a means of reimbursing local governments for certain services to the mentally retarded *and persons afflicted with alcoholism which counties may elect to provide."* (Emphasis added.) Since the provision of services in each county for the "mentally disordered" was at that time mandatory (see prior § 5602), the legislative dichotomy between "mental disorder" and "alcoholism" could not have been made clearer.

This "legislative dichotomy" became even more pronounced in the present decade. By Statutes 1975, Chapter 1128, the Legislature amended the Short-Doyle Act to remove therefrom any allusion to "alcoholism" as part of the community mental health services provided pursuant to that act. By the same law the Legislature enacted sections 19900 through 19973 of the Welfare and Institutions Code. These sections created the state Office of Alcoholism in the Health and Welfare Agency and provided a separate structure for community alcoholism prevention, treatment and rehabilitation programs patterned upon the Short-Doyle Act.[5] In short, in 1975 community "alcoholism" programs were completely severed from "Short-Doyle." Finally, in 1977, the provisions relating to the Office of Alcoholism were merged with the "drug abuse" functions of the now defunct Department of Health, to constitute the law with respect to "ADA", that is, the Department of Alcohol and Drug Abuse.

Significantly, the 1975 legislation establishing the Office of Alcoholism stated in section 19901 of the Welfare and Institutions Code that "[t]he Legislature declares that alcoholism is: "(a) The most serious *drug* abuse problem in California." (Emphasis added; see now Welf. & Inst. Code, § 19901, subd. (a).) It is to be recalled that even before the enactment of the Psychiatric Technicians Law in 1959, the Legislature had categorized "alcoholism" not as a "mental illness" but with drug addiction insofar as commitment to

[5] We note also that previously there had been provisions in the Welfare & Institutions Code for rehabilitation of alcoholics under the direction of the Department of Rehabilitation, providing for community programs (prior Welf. & Inst. Code, §§ 19800, 19812); provisions for local community treatment and rehabilitation services for chronic alcoholics (prior Welf. & Inst. Code, §§ 19850–19854); and provisions establishing a prior agency, the "Office of Alcohol Program Management" (prior Welf. & Inst. Code, §§ 19900–19906).

mental hospitals was concerned. Thus, such categorization essentially survived over at least three decades, finding its fruition in the establishment of the Office of Alcoholism, and now ADA.

Accordingly, it appears clear that in 1959, when the Psychiatric Technicians Law was enacted, as well as today, California law did not and does not intend to include "alcoholism" within the term "mentally ill" as used in the Psychiatric Technicians Law. Thus, in our opinion, alcoholics as a class were not intended to be encompassed within the category of "mentally ill or mentally retarded" persons as used in section 4502 of the Business and Professions Code, which section defines who must be licensed as psychiatric technicians.

This conclusion leaves only one other point to be discussed with reference to the history of the Psychiatric Technicians Law and other state laws relating to alcoholism. In defining who are psychiatric technicians, section 4502 of the Business & Professions Code presently speaks in terms of the care of "mentally ill, *emotionally disturbed*, or mentally retarded persons." (Emphasis added.) The category of "emotionally disturbed" persons was added to section 4502 in 1968. (Stats. 1968, Ch. 1323, § 2, p. 2501.) Does the addition of this term nullify in any way our conclusion with respect to the intent of the Legislature to treat "alcoholics" as a separate class from those intended to be encompassed by section 4502 of the Psychiatric Technicians Law? In short, what was the intent of the 1968 amendment to section 4502?

On the surface, the 1968 amendment to section 4502 appears puzzling. It retained the term "mentally ill" in the law at the same time that term was being uniformally replaced in our law with the term "mentally disordered." It also added the term "emotionally disturbed" which, to our knowledge, has no counterpart in California law with respect to the care and treatment of mental patients. However, the legislative history at that time indicates that the 1968 amendment to section 4502 was intended to avoid confusion in terminology, not engender it. As noted already, the terminology "mentally ill" fell into disrepute with the enactment of "The California Mental Health Act of 1967", and the term "mentally disordered" was substituted thereof or generally in the law. That law (which included both IPS and a revised Short-Doyle Act) was not immediately operative, but was to become so on July 1, 1969. (Stats. 1967, Ch. 1667, § 48, p. 4188 as amended by Stats. 1968, Ch. 989, § 3, p. 1928–1929.) Prior to the general change in terminology in the Welfare and Institutions Code, that code provided a somewhat remote commitment procedure, that is, the commitment of "*mentally disordered persons*." These individuals were considered to be those merely "bordering on mental illness but not dangerously ill." (See, e.g., prior Welf. & Inst. Code, § 5075 *et seq*. as they existed until 1965.) These individuals were not to be committed to state mental hospitals, but could either be committed to the custody of the local "counselor of mental health" and permitted to remain

at home, or be committed to a "suitable home, sanitarium, or rest haven home, subject to the supervision of the counselor in mental health." (See prior Welf. & Inst. Code, § 5076.) *Apparently as late as 1967*, section 5568 (after a renumbering of code provisions in 1965) provided as to such "borderline" mentally ill persons:

> "If, on the examination as provided by law, the court finds a person to be mentally disordered and bordering on mental illness but not dangerously mentally ill, the court may commit him to the care and custody of the counselor in mental health and may allow him to remain in his home subject to the visitation of a counselor in mental health and subject to return to the court for further proceedings whenever such action appears necessary or desirable; or the court may commit him to be placed in a suitable home, sanitarium, or rest haven home, subject to the supervision of the counselor in mental health and the further order of the court."[6]

Therefore, when section 4502 of the Psychiatric Technicians Law was amended in 1968 to add the term "emotionally disturbed" persons, it would appear that the legislative intent was to expand the coverage of the licensing law to include borderline cases of "mental illness." The term "mentally disordered" persons appears to have been eschewed despite the then impending changeover to that term throughout the Welfare and Institutions Code to avoid confusing that term with the similar terminology used to describe "borderline mental illness." We so conclude based upon the history of the various laws discussed above which are in *pari materia*. (*Stafford v. Realty Board Service Corp*., *supra*, 39 Cal. 2d 797, 805; *People v. Ventura Refining Co*., *supra*, 204 Cal. 286, 291.)[7]

Accordingly, it is our opinion that in 1958, when section 4502 of the Business and Professions Code was enacted, as well as in 1968 when it was amended, there was no intent on the part of the Legislature to include "alcoholics" within the class of persons described in that section as "mentally ill, emotionally disturbed, or mentally retarded persons." We so conclude based upon the statutory history of section 4502 and statutes *in pari materia*. Therefore, BVNPTE does not have the authority to require alcoholism program counselors

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[6] This section was repealed by Stats. 1967, Ch. 1652, § 6, p. 3987, and thus was not quite carried over until July 1, 1969, the operative date of "The California Mental Health Act of 1967."

[7] This intent can also be deduced from the fact that a serious mental disturbance has been thought of as "insanity" or a "psychosis," whereas lesser mental disturbances have been thought of as "neuroses" and "emotional disturbances." Thus, the amendment to sections 4502 was apparently intended to insure the inclusion of these lesser mental disturbances when the term "mentally ill" fell into disrepute, without using the all encompassing, but possibly confusing term "mentally disordered." (See, e.g., Beeson-MeDermort, Textbook of Medicine (14th Ed. 1975) at pp. 569–577.)

to be licensed as psychiatric technicians. This conclusion obviates any necessity to discuss or rely upon an analysis of the various definitions of "alcoholism," or the controversy over its cause, nature and proper treatment.

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